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NCV 5 2004

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In re Application of :  
Masayuki Fukumura et al :  
Serial No.: 09/843,922 : PETITION DECISION  
Filed: April 30, 2001 :  
Attorney Docket No.: 2144.0270001 :

This is a response to the petition under 37 CFR 1.59(b), filed August 30, 2004, to expunge information from the above identified application.

Petitioner requests that documents submitted August 30, 2004, as as part of an Information Disclosure Statement be expunged from the record. Petitioner states either: (A) that the information contains trade secret material, proprietary material and/or material that is subject to a protective order which has not been made public; or (B) that the information submitted was unintentionally submitted and the failure to obtain its return would cause irreparable harm to the party who submitted the information or to the party in interest on whose behalf the information was submitted, and the information has not otherwise been made public. The petition fee set forth in 37 CFR 1.17(h) has been paid.

This is an examined application. The proprietary material submitted is a reference to an unpublished patent application which is listed on Form 1449 with other published (non-proprietary) documents. Note M.P.E.P. 724.02:

724.02 [R-2] Method of Submitting Trade Secret, Proprietary, and/or  
Protective Order Materials

Information which is considered by the party submitting the same to be either trade secret material or proprietary material, and any material subject to a protective order, must be clearly labeled as such and be filed in a sealed, clearly labeled, envelope or container. Each document or item must be clearly labeled as a "Trade Secret" document or item, a "Proprietary" document or item, or as an item or document "Subject To Protective Order." It is essential that the terms "Confidential," "Secret," and "Restricted" or "Restricted Data" not be used when marking these documents or items in order to avoid confusion with national security information documents which are marked with these terms (note also MPEP § 121). ... Of course, the envelope or container, as well as each of the documents or items, must be labeled with complete identifying information for the file to which it is directed, including the Office or area to which the envelope or container is directed. Examples of appropriate labels for such an envelope or container addressed to an application are as follows: (Appropriate changes would be made for papers filed in a reexamination file.)

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B. "PROPRIETARY MATERIAL NOT OPEN TO PUBLIC. TO BE OPENED ONLY BY EXAMINER OR OTHER AUTHORIZED U.S. PATENT AND TRADEMARK OFFICE EMPLOYEE.

>DO NOT SCAN<

In re Application of  
Application No.

Filed:

For: (Title of Invention)

TC Art Unit:

Examiner:

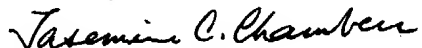
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The envelope or container must be accompanied by a transmittal letter which also contains the same identifying information as the envelope or container. The transmittal letter must also state that the materials in the envelope or container are considered trade secrets or proprietary, or are subject to a protective order, and are being submitted for consideration under MPEP § 724. A petition under 37 CFR 1.59 and fee therefor (37 CFR 1.17(h)) to expunge the information, if found not to be important to a reasonable examiner in deciding whether to allow the application to issue as a patent, \*\*>should< accompany the envelope or container.

M.P.E.P. states that proprietary information must be submitted as a separate submission and be properly labeled, as detailed above. The information submitted on Form 1449 does not comply with M.P.E.P. 724.02 and will not be expunged from the file.

The petition is **DENIED**.

Should there be any questions with respect to this decision, please contact William R. Dixon, Jr., by mail addressed to: Director, Technology Center 1600, P.O. Box 1450, Alexandria, VA 22313-1450, or by telephone at 571-272-0519 or by facsimile transmission at general Office facsimile number, 703-872-9306.



Jasemine C. Chambers  
Director, Technology Center 1600